

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ABBY M ROBINSON
Claimant

APPEAL 17A-UI-03912-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CONIFER REVENUE CYCLE SOLUTIONS
Employer

**OC: 03/12/17
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer filed an appeal from the March 31, 2017, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on May 4, 2017. The claimant participated and testified. The employer participated through Patient Access Manager LuRae Croshaw. Employer's Exhibits 1 through 3 were received into evidence.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?

Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

Can any charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a patient access level 3 from August 7, 2006, until this employment ended on March 17, 2017, when she was discharged.

On March 14, 2017, Croshaw noticed what she believed to be an error on claimant's time sheet. Specifically, Croshaw noticed claimant's timecard said she was working during a time she knew claimant was on break and showed her as being on break during a time she knew claimant was working. Croshaw asked claimant about this discrepancy and was told that she had problems with the computer system while clocking in and out and that the problem had been reported to IT. Croshaw asked claimant to supply a ticket number so she could confirm this, which claimant did. When following up with IT Croshaw discovered that the ticket number she had been given was an old ticket number and that the IT department showed the incident was not reported until

6:49 p.m., which was later than claimant reported having contacted IT and after she had gone home for the day. It was concluded that claimant had been dishonest about the circumstances surrounding her report to IT and her employment was terminated. Claimant had no prior warnings for similar issues.

Claimant testified she called IT to report the issue with her timecard towards the end of her shift. According to claimant she spoke to an employee named Sheena who gave her one ticket number and later, another ticket number. Claimant explained Sheena told her they initially believed the problem was a system wide problem they have been trying to track and address for several months and that all those issues were being placed under the same, old, ticket number. According to claimant Sheena then explained they were able to determine her problem was unrelated to the ongoing system-wide issue so they had to issue her a new ticket number. Claimant also explained that she could not have possibly called IT about the problem from home at 6:49 p.m. because she would have been required to give IT the number of her computer, which she would have needed to be at work to do. Croshaw agreed IT would not have been able to troubleshoot with claimant from her home.

The claimant filed a new claim for unemployment insurance benefits with an effective date of March 12, 2017. The claimant filed for and received a total of \$2,880.00 in unemployment insurance benefits for the weeks between March 12 and April 29, 2017. The claimant participated in a telephone fact-finding interview regarding the separation on March 30, 2017. The employer participated through the submission of written documents. The fact finder determined claimant qualified for benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:
 - a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

- a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of

employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

The decision in this case rests, at least in part, on the credibility of the witnesses. It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, reviewing the exhibits submitted by the parties, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the claimant's version of events to be more credible than the employer's recollection of those events. Claimant credibly testified she was not dishonest with the employer, as it would have been impossible for IT to assist her with her problem at the time it reported she called. Both parties agree claimant was not at work at 6:49 p.m. and that she would not have been able to work through troubleshooting while at home. The level of detail claimant could recall from her conversations with IT and her willingness to admit details she could not remember lend to her credibility.

Claimant was discharged because the employer believed she was being dishonest about an issue involving the IT department. The conduct for which claimant was discharged appears to a misunderstanding between claimant, Croshaw, and the IT department. The employer has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. Benefits are allowed. The issues of overpayment and participation are moot.

DECISION:

The March 31, 2017, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid. The issues of overpayment and participation are moot.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs